

RIVERCHASE AT PROMENADE HOMEOWNERS ASSOCIATION

ELECTION RULES

(Adopted by the Board of Directors on 9/2, 2020)

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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TABLE OF CONTENTS

Section 1	Elections Regarding Selection of Directors	
A.	Nomination of Candidates	1
1.	Candidate Solicitation Announcement	1
2.	Self-Nomination	1
B.	Director Election Statements	2
C.	Uncontested Elections.	2
D.	Qualifications for Candidacy and Election to the Board	3
E.	Access to Association Media and Common Area Meeting Space	3
1.	Access to Association Media	3
2.	Access to Common Area Meeting Space	4
F.	Election Notification.	4
G.	Content of Ballots	5
H.	Distribution of Ballot Packets	5
I.	Rules Regarding Voting Using the Two-Envelope System	6
J.	Balloting Period	7
K.	Inspector of Election.	7
1.	Appointment and Term.	7
2.	Qualifications	8
3.	Duties and Powers	8
L.	Opening of Envelopes / Counting and Tabulation of Ballots	10
M.	Election Results	11
N.	Inspector of Election Report.	11
O.	Custody, Storage and Retention of Election Materials	11
P.	Multiple Lot Ballots.	12
Section 2	Elections Regarding All Other Matters	
A.	Access to Association Media and Common Area Meeting Space	12
1.	Access to Association Media	12
2.	Access to Common Area Meeting Space	13
B.	Election Notification.	13

C.	Content of Ballots	13
D.	Distribution of Ballot Packets	14
E.	Rules Regarding Voting Using the Two-Envelope System	15
F.	Balloting Period	15
G.	Inspector of Election.	15
H.	Opening of Envelopes / Counting and Tabulation of Ballots	15
I.	Election Results	15
J.	Inspector of Election Report.	15
K.	Custody, Storage and Retention of Election Materials	15
L.	Multiple Lot Ballots.	15
Section 3	General Election / Voting Provisions	
A.	Qualifications for Voting	15
B.	Voting Power of Memberships.	16
	1. Director Elections	16
	2. All Other Matters.	16
C.	Proxies	16
D.	"Candidate Registration List" and "Voter List".	16
	1. Candidate Registration List	16
	2. Voter List.	16
EXHIBIT "A"	REQUIRED INFORMATION FOR "CANDIDATE SOLICITATION ANNOUNCEMENT"	1
EXHIBIT "B"	GENERAL FORMAT FOR "CANDIDATE SOLICITATION ANNOUNCEMENT"	1
EXHIBIT "C"	GENERAL FORMAT FOR "NOTICE OF DESIRE TO BE A CANDIDATE"	1
EXHIBIT "D"	GENERAL FORMAT FOR "ELECTION NOTIFICATION"	5
EXHIBIT "E"	GENERAL FORMAT FOR "SECRET BALLOT VOTING INSTRUCTIONS"	6
EXHIBIT "F"	GENERAL FORMAT FOR "REPORT OF INSPECTOR OF ELECTION"	11

RIVERCHASE AT PROMENADE HOMEOWNERS ASSOCIATION ELECTION RULES

The following Election Rules are adopted in accordance with California Civil Code Section 4340 *et seq.* and pursuant to the authority of the Association's governing documents, are intended to comply with California Civil Code Section 5105 *et seq.*, and shall apply to elections regarding (1) Assessments, (2) selection of Directors, (3) removal of Directors, (4) amendments to the governing documents, (5) grants of exclusive use of common area property pursuant to California Civil Code Section 4600, and (6) any other matter that may be the subject of a vote of Association Members. Unless the context clearly indicates otherwise, capitalized terms used herein shall have the same meaning as in the Association's governing documents. The following Election Rules are intended to replace and supersede any previously-adopted Election Rules.

Section 1 Elections Regarding Selection of Directors

This Section 1 shall apply to elections regarding selection of Directors.

A. Nomination of Candidates. In addition to any nomination procedures set forth in the Association's Bylaws (except as noted below), Members shall become candidates for election to the Board of Directors as follows:

1. Candidate Solicitation Announcement. Not less than 30 days before the Association provides the *Election Notification* required by Section 1, Paragraph F of these Election Rules, the Association shall distribute (via "general delivery"¹) a notice to all Members (1) inviting them to become candidates for election to the Board and (2) informing them about *Multiple Lot Ballots* ("Candidate Solicitation Announcement"). The *Candidate Solicitation Announcement*, which may be presented in the Association's regular newsletter (if such newsletter is distributed via "general delivery"), shall contain at least the information set forth in attached **EXHIBIT "A"**, and shall be presented in a manner substantially consistent with the sample in attached **EXHIBIT "B"**.

2. Self-Nomination. Each Member who wishes to become a candidate must submit a written notification to the Association indicating the Member's desire to become a candidate ("Notice of Desire to be a Candidate"). The *Notice of Desire to be a Candidate* shall be presented in a manner substantially consistent with the sample in attached **EXHIBIT "C"**. Each Member's *Notice of Desire to be a Candidate* must either be mailed, hand delivered or e-mailed to the Association at the address(es) designated by the Board of Directors for that purpose, and must be received by the Association at such address(es) prior to the

¹ As that term is defined in California Civil Code Section 4045.

deadline specified in the *Candidate Solicitation Announcement* ("Nomination Deadline"). The Nomination Deadline shall not be earlier than 5:00 p.m. on the date that is 30 days after the date the *Candidate Solicitation Announcement* was distributed to the Members. It is each Member's responsibility to confirm that such Member's *Notice of Desire to be a Candidate* was received by the Association prior to the Nomination Deadline. Each Member who meets the qualifications set forth in Section 1, Paragraph D of these Election Rules and whose *Notice of Desire to be a Candidate* is received by the Association prior to the Nomination Deadline shall automatically be a candidate. There shall be no nominations from the floor at membership or Board meetings and votes for write-in candidates shall not be valid.

B. Director Election Statements. Candidates and Members advocating a point of view may, but are not required to, submit a statement ("Director Election Statement") which (1) when printed, shall not exceed one side of a single 8½" x 11" page² and (2) shall be reasonably related to the election. Each Member's *Director Election Statement* must either be mailed, hand delivered or e-mailed to the Association at the address(es) designated by the Board of Directors for that purpose, and must be received by the Association at such address(es) prior to the Nomination Deadline. It is each Member's responsibility to confirm that such Member's *Director Election Statement* was received by the Association prior to the Nomination Deadline.

By submitting a *Director Election Statement*, the author accepts full responsibility for the content thereof and agrees to indemnify the Association and its agents and representatives for any and all damage arising from or related to any such content.

C. Uncontested Elections. Unless prohibited by California law, and notwithstanding anything contained in the Association's governing documents to the contrary, if, at the Nomination Deadline, the total number of candidates for election to the Board is equal to or less than the number of seats to be filled at the election, then those candidates are deemed elected to terms that shall commence upon the expiration of the predecessors' terms and the Association can dispense with distributing ballots and conducting the election. If the number of Directors so elected is less than the number of seats to be filled at the election, the incoming Board of Directors shall fill the vacancy(ies) as provided for in the Association's Bylaws.

² If the Association receives a *Director Election Statement* that, when printed, exceeds one side of a single 8½" x 11" page, the *Director Election Statement* shall be deemed to be only the first printed page.

D. Qualifications for Candidacy and Election to the Board.

1. In order to be eligible to become a candidate, a person must, as of the Nomination Deadline, be (a) a Member³ and (b) current in the payment of regular and special Assessments.⁴

2. In order to be eligible for election to the Board, a candidate must, as of the date scheduled for close of the balloting period, be (a) a Member³ and (b) current in the payment of regular and special Assessments.⁴

3. At all times, at least one Director shall have been elected solely by the Class A Members, excluding Declarant.

The requirement to be a Member does not apply to any candidate or Director who is appointed by Declarant.

E. Access to Association Media and Common Area Meeting Space. The Association shall ensure that the legal requirements set forth in California Civil Code Section 5105(a)(1) and (2) are met by implementing the following:

1. *Access to Association Media.*

a. Candidates and Members advocating a point of view may, but are not required to, submit a *Director Election Statement* which (1) when printed, shall not exceed one side of a single 8½" x 11" page and (2) shall be reasonably related to the election. Only those *Director Election Statements* that are received by the Association prior to the Nomination Deadline shall be treated as *Director Election Statements* under these Election Rules. The Association shall not edit or redact any content from the *Director Election Statements*.

³ If title to a Lot is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of this Section 1, Paragraph C.

⁴ A Member shall not be disqualified for failure to be current in payment of regular and special Assessments if any of the following circumstances is true:

(1) The Member has paid the regular or special Assessment under protest pursuant to California Civil Code Section 5658; or

(2) The Member has entered into a payment plan pursuant to California Civil Code Section 5665; or

(3) The Member has not been provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code Section 5900 *et seq.*

b. Black-and-white copies of all *Director Election Statements* received prior to the Nomination Deadline will be included in the *Ballot Packets* that are mailed to all Members (see Section 1, Paragraph H of these Election Rules).

c. Printed and then scanned copies of all *Director Election Statements* received prior to the Nomination Deadline (presented in alphabetical order by last name) may be posted on the Association's official internet website. If posted, such posting shall commence no later than five days after the date the *Ballot Packets* are mailed to the Members, and shall continue until no earlier than the date of the meeting at which the envelopes are opened and the ballots are counted and tabulated.

d. No other access to Association media, newsletters or internet websites shall be provided by the Association to any candidate or Member advocating a point of view during a campaign for purposes that are reasonably related to the election.

e. Nothing in these Election Rules shall preclude the Association, during the balloting period, from communicating to the Members (via e-mail to all Members who have consented to receiving documents from the Association by e-mail, and in other ways): (i) reminders of the ongoing election, (ii) encouragement to return ballots prior to the close of the balloting period, (iii) instructions for obtaining a replacement ballot and/or (iv) information on how and where to return completed ballots.

2. Access to Common Area Meeting Space. Access to common area meeting space, if any exists, shall be provided during a campaign to all candidates and Members advocating a point of view for purposes reasonably related to the election, at no cost, subject to procedural rules as may be adopted by the Board to assure orderly use of such meeting space.

F. Election Notification. Not less than 30 days before the Association mails out the *Ballot Packets* (see Section 1, Paragraph H of these Election Rules), the Association shall provide all of the following ("Election Notification") (via "general delivery"¹):

1. The physical address(es) where ballots are to be returned by mail or handed to the Inspector of Election;

2. The date and time by which ballots are to be returned by mail or handed to the Inspector of Election;

3. The date, time, and location of the meeting at which the ballots are scheduled to be counted; and

4. The list of all candidates' names that will appear on the ballot.

The *Election Notification* shall be presented in a manner substantially consistent with the sample in attached EXHIBIT "D".

G. Content of Ballots. The official ballot form⁵ shall contain or state the following:

1. each candidate's name, listed in alphabetical order by last name;
2. the number of Directors to be elected;
3. the date and time the initial balloting period will close;
4. the quorum requirement;
5. a statement that the balloting period may be extended if sufficient ballots have not been received to establish a quorum;
6. the internet website address where these Election Rules are posted, together with the following phrase (in at least 12-point font): "*The rules governing this election may be found here*";⁶ and
7. If cumulative voting is permitted,⁷ that each Member is entitled to cast the number of votes equal to the number of Directors to be elected, to be cast as desired (i.e., the Member may cast all votes for one candidate or may divide those votes among any combination of candidates, but is not allowed more votes than the number of Directors to be elected).

H. Distribution of Ballot Packets. Not less than 30 days prior to the date scheduled for the close of the initial balloting period, the Association shall prepare (or cause to be prepared) the ballot packet ("Ballot Packet"), and the Inspector of Election shall mail (or cause to be mailed⁸), (via first-class U.S. mail, postage prepaid) one *Ballot Packet* to each Member. Each *Ballot Packet* shall contain all of the following:

1. one official ballot;

⁵ Or forms, if one or more Members has requested a *Multiple Lot Ballot*.

⁶ In lieu of posting these Election Rules on an internet website and including this phrase on the ballot itself, the Association may instead include a copy of these Election Rules in the *Ballot Packets*.

⁷ Cumulative voting is authorized at any election of Directors where more than two positions are to be filled by a vote of the Members (see Section 6.6 of the Association's Bylaws).

⁸ By any person or entity designated by the Inspector of Election, including without limitation the Association's management company.

2. black-and-white copies of all *Director Election Statements* received by the Association prior to the Nomination Deadline;

3. a statement specifying that the Association was not permitted to edit or redact any content from the *Director Election Statements* and thus the author of each *Director Election Statement*, and not the Association, is responsible for the content of such *Director Election Statement*;

4. two sealable envelopes, a smaller envelope ("Inner Envelope") and a larger envelope ("Outer Envelope");

5. instructions on how to vote using the two-envelope system ("Secret Ballot Voting Instructions");⁹ and

6. if the internet website address referred to in Section 1, Paragraph G.6 of these Election Rules is not included on the ballot, a copy of these Election Rules.

The Inner Envelope shall either (1) be totally blank or (2) contain such wording as may be determined or approved by the Inspector of Election. There shall be no Member-identifying markings on the Inner Envelope. The Outer Envelope shall be pre-addressed to the Inspector of Election at the address specified by the Inspector of Election. The Outer Envelope shall contain *either* (1) blank lines in the upper left hand corner for the voter to sign the voter's name, indicate the voter's name, and indicate the address(es) or Lot number(s) that entitles/entitle the voter to vote *or* (2) a pre-printed label that indicates the voter's name and the address(es) or Lot number(s) that entitles/entitle the voter to vote and contains at least one blank line for the voter to sign the voter's name.

I. Rules Regarding Voting Using the Two-Envelope System.

1. The ballot shall not be required to be signed by the voter.

2. Once completed, the ballot must be inserted into the Inner Envelope and the Inner Envelope must be sealed. The Inner Envelope containing the completed ballot must then be inserted into the Outer Envelope and the Outer Envelope must be sealed.

3. In the upper left-hand corner of the Outer Envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address(es) or Lot number(s) that entitles/entitle the voter to vote. If the voter is using a *Multiple Lot Ballot*, the Outer Envelope must identify all addresses or Lot numbers for which the *Multiple Lot Ballot* is being used and must be signed by at least one of the people who were identified as authorized signatories and whose signatures

⁹ The *Secret Ballot Voting Instructions* shall be presented in a manner substantially consistent with the sample in attached **EXHIBIT "E"**.

were included in the *Multiple Lot Ballot Request*. The Inspector of Election has the power to invalidate any ballot if the Outer Envelope does not comply with this Paragraph I.3. The Inspector of Election has the power to invalidate any *Multiple Lot Ballot* if the signature on the Outer Envelope for a *Multiple Lot Ballot* does not, in the Inspector of Election's sole opinion, match one of the signatures that were included in the *Multiple Lot Ballot Request*.

4. Once a ballot is cast, it cannot be revoked. A ballot is deemed "cast" when it is received at the location(s) designated by the Inspector of Election.

5. The sealed Outer Envelopes shall remain in the custody of the Inspector of Election, or at a location designated by the Inspector of Election, at all times prior to completion of the tabulation process.

6. If the Inspector of Election designates the Association's mailing address as the location to which the Outer Envelopes containing the ballots must be mailed or delivered by hand, the Association shall (i) maintain a log of all Outer Envelopes received and (ii) put all Outer Envelopes in the order designated by the Inspector of Election. The Association may, but is not required to, report on at least a weekly basis during the balloting period, on the Association's official internet website, the total number of Outer Envelopes received. For the purpose of reporting the total number of Outer Envelopes received, each Outer Envelope purporting to contain a *Multiple Lot Ballot* shall be counted as the number of addresses or Lots that are identified on such Outer Envelope. The report of the total number of Outer Envelopes received shall not separate the count as between Outer Envelopes containing single ballots and Outer Envelope containing *Multiple Lot Ballots*, or on any other criteria.

7. The Outer Envelopes shall not be opened until the Inspector of Election instructs them to be opened.

J. **Balloting Period.** The initial balloting period shall begin on the date the ballots are distributed and shall close at such time(s) and on such date(s) established by the Board, which shall be not less than 30 days from the date the *Ballot Packets* are mailed to the Members. Ballots received by the Inspector of Election after that time (or, if applicable, after the time established for any extension of the balloting period) will not be accepted or counted.

K. **Inspector of Election.**

1. ***Appointment and Term.*** Before the Association provides the *Election Notification* required by Section 1, Paragraph F of these Election Rules, the Board shall appoint one or three people to serve as the Inspector of Election. Each Inspector of Election shall serve at the pleasure of the Board until he or she resigns or is discharged by the Board.

2. Qualifications. The Inspector of Election shall be an "independent third party". For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. Except as provided below, an independent third party may be a Member of the Association. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as the Inspector of Election.

Notwithstanding the foregoing, in no case shall a person serve as an Inspector of Election if he or she is:

- a. a member of the Board or a candidate for the Board; or
- b. related to a member of the Board or a candidate for the Board.

3. Duties and Powers. The Inspector of Election shall have all powers of an inspector of election as set forth in California Corporations Code Sections 7517 and 7614 and other applicable provision of California law. Without limiting the generality of the foregoing, the Inspector of Election shall also have the power to do all of the following:

- a. select the party responsible for mailing the *Ballot Packets*;
- b. specify one or more locations to which the Outer Envelopes containing the ballots must be mailed or delivered by hand;
- c. determine the number of memberships entitled to vote and the voting power of each;
- d. determine the authenticity, validity, and effect of proxies, if any, and ballots;
- e. establish and apply such rules and procedures as the Inspector of Election deems appropriate to permit each Member who owns multiple Lots to cast some or all of his or her votes on a *Multiple Lot Ballot* rather than on multiple ballots, for the Member's administrative convenience, and to permit the Inspector of Election to individually identify, track and tabulate all such *Multiple Lot Ballots*;
- f. receive ballots;
- g. hear and determine all challenges and questions in any way arising out of, or in connection with, the right to vote;

h. hear and determine all challenges and questions in any way relating to the envelopes and the ballots;

i. determine whether or not, in the Inspector of Election's sole opinion, the signature on the Outer Envelope for a *Multiple Lot Ballot* matches one of the signatures that were included in the *Multiple Lot Ballot Request*.

j. count and tabulate all votes;

k. appoint and oversee additional people to open envelopes, count and tabulate votes, and undertake other tasks in connection with the election that the Inspector of Election deems necessary or appropriate, provided that each such person meets the same qualifications as the Inspector of Election as set forth in Section 1, Paragraph K.2 of these Election Rules;

l. establish and apply such rules and procedures as the Inspector of Election deems appropriate to assure that the Members witnessing the opening of the envelopes and the counting and tabulation of the ballots do not interfere with the process, including establishing locations where such Members must, or cannot, be while the envelopes are being opened and the ballots are being counted and tabulated;

m. determine when the polls close, consistent with the governing documents;

n. determine the tabulated results of the election;

o. conduct a random drawing or other method of chance as determined by the Inspector of Election to break a tie in the number of votes cast for election of candidates to the Board;

p. prepare a written *Report of Inspector of Election* (see Section 1, Paragraph N of these Election Rules); and

q. perform any acts as may be proper to conduct the election with fairness to all Members in accordance with California Civil Code Section 5105, the California Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with California Civil Code Section 5105.

The Inspector of Election shall not invalidate a ballot solely because (i) the voter signed the ballot or otherwise marked the ballot in a manner that allows the voter to be identified, (ii) the voter marked the Inner Envelope in a manner that allows the voter to be identified, (iii) the voter marked the Inner Envelope in a manner

that distinguishes it from the other Inner Envelopes, (iv) the Inner Envelope was not sealed, (v) the Outer Envelope was not sealed, or (vi) the voter inserted the ballot into the Outer Envelope without first inserting it into the Inner Envelope.

The Inspector of Election shall perform its duties impartially, in good faith, to the best of its ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. If there are three people serving as the Inspector of Election, the decision or act of a majority shall be effective in all respects as the decision or act of the Inspector of Election.

L. Opening of Envelopes / Counting and Tabulation of Ballots.

1. No Outer Envelope containing a ballot may be opened prior to the time at which the ballots are to be counted and tabulated.

2. Envelopes may only be opened and ballots tabulated if a sufficient number of Outer Envelopes exist to meet the quorum requirement for Member action under the governing documents. Although the Inspector of Election has the power to invalidate any ballot if the Outer Envelope does not comply with Paragraph I.3 of these Election Rules, any such Outer Envelope shall be counted toward meeting the quorum requirement for Member action under the governing documents. In the event that there are not enough Outer Envelopes to meet the quorum requirement, the Inspector of Election shall, in accordance with Section 7.4 of the Association's Bylaws, deem the seats to be vacant, and the Board may then fill such vacancies in accordance with Section 7.4.2 of the Association's Bylaws.

3. The envelopes shall be opened and the ballots shall be counted and tabulated in public, at a properly noticed Membership meeting or properly noticed Board meeting which may, but need not, be scheduled to take place concurrently with the Annual Membership Meeting.

4. Only the Inspector of Election and individuals designated by the Inspector of Election shall open the envelopes and count and tabulate the ballots. No other person may touch any envelope, ballot or other material used in connection with the election, without the Inspector of Election's express consent. No person may copy and/or transmit (photographically, by video, digitally or otherwise) any portion of any envelope, ballot or other material used in connection with the election, without the Inspector of Election's express consent.

5. Members may witness the opening of the envelopes and the counting and tabulation of the ballots, so long as they observe all procedural rules established by the Inspector of Election pursuant to Section 1, Paragraph K.3 of these Election Rules.

6. Each Outer Envelope received by the Inspector of Election shall be treated as a Member present at a meeting for purposes of establishing quorum. Each Outer Envelope purporting to contain a *Multiple Lot Ballot* shall be counted, for quorum purposes, as the number of addresses or Lots that are identified on such Outer Envelope.

7. Write-in candidates are not permitted. Accordingly, votes for write-in candidates shall not be valid.

M. Election Results.

1. The Inspector of Election shall promptly report the tabulated results of the election to the Board. The Board shall record the results in the minutes of the next Board meeting (which can be accomplished by attaching the Report of Inspector of Election as an exhibit to such minutes) and shall make the results available for review by Members.

2. Within 15 days following the meeting at which the ballots were counted and tabulated, the Board shall notify the Members (via "general delivery"¹) of the tabulated results of the election.

N. Inspector of Election Report. Following the conclusion of the meeting at which the ballots are counted and tabulated, the Inspector of Election shall prepare and submit to the Board a written "Report of Inspector of Election". The *Report of Inspector of Election* shall be presented in a manner substantially consistent with the sample in attached **EXHIBIT "F"**.

O. Custody, Storage and Retention of Election Materials.

1. After the Inspector of Election reports the tabulated results of the election to the Board, the ballots, Outer Envelopes, *Voter List*,¹⁰ proxies (if any), and *Candidate Registration List*¹¹ (if applicable) (collectively, the "Election Materials") shall be in the custody of the Inspector of Election or at a location designated by the Inspector of Election until the time allowed by California Civil Code Section 5145 for challenging the election has expired, at which time the Inspector of Election shall transfer custody of the Election Materials to the Association.

2. In the event of a recount or other challenge to the election process, the Inspector of Election shall, upon written request, make the ballots available for inspection and review by Members or their authorized representatives. Any

¹⁰ See Section 3, Paragraph D.2 of these Election Rules.

¹¹ See Section 3, Paragraph D.1 of these Election Rules.

recount shall be conducted in a manner that preserves the confidentiality of the vote.¹²

3. After the transfer of custody of the Election Materials to the Association, the Election Materials shall be stored in a secure place for at least one year after the date of the meeting at which the ballots were counted and tabulated.

P. Multiple Lot Ballots. Notwithstanding anything contained in the Association's governing documents to the contrary, Members who own multiple Lots may, but are not required to, cast some or all of their votes on a single ballot ("Multiple Lot Ballot") rather than on multiple ballots, if they submit a written request on the form provided by the Association for that purpose ("Multiple Lot Ballot Request"). The *Multiple Lot Ballot Request* shall identify all Lots for which the Member wishes to use a *Multiple Lot Ballot*, shall identify the person or people who are authorized to sign the Outer Envelope containing the *Multiple Lot Ballot*, and shall contain the signatures of such people. The *Multiple Lot Ballot Request* must either be mailed, hand delivered or e-mailed to the Association at the address(es) designated by the Board of Directors for that purpose, and must be received by the Association prior to the Nomination Deadline. It is each Member's responsibility to obtain a *Multiple Lot Ballot Request* form from the Association and to confirm that his or her completed *Multiple Lot Ballot Request* was received by the Association prior to the Nomination Deadline. Each Member whose *Multiple Lot Ballot Request* is received by the Association prior to the Nomination Deadline shall receive a *Multiple Lot Ballot*, which will enable such Member to cast some or all of his or her votes on a single ballot rather than on multiple ballots, for the Member's administrative convenience. Each Member who uses a *Multiple Lot Ballot* (1) understands that its use might compromise the "secrecy" aspect of the balloting process with respect to such Member, (2) knowingly and voluntarily waives any right or expectation to such "secrecy" and (3) agrees to release and indemnify the Inspector of Election, the Association, and their respective agents and representatives, for any and all damage arising from or related to his or her use of a *Multiple Lot Ballot*.

Section 2 Elections Regarding All Other Matters

This Section 2 shall apply to elections regarding (i) Assessments, (ii) removal of Directors, (iii) amendments to the governing documents, (iv) grants of exclusive use common area property pursuant to California Civil Code Section 4600 and (v) any other matter that may be the subject of a vote of Association Members.

A. Access to Association Media and Common Area Meeting Space. The Association shall ensure that the legal requirements set forth in California Civil Code Section 5105(a)(1) and (2) are met by implementing the following:

1. ***Access to Association Media.***

¹² The signed Outer Envelopes may be inspected but may not be copied.

a. If the Association provides access to Association media, newsletters, or internet website during a campaign to any Member advocating a point of view for purposes that are reasonably related to the election, then all Members advocating a point of view for purposes that are reasonably related to the election shall have equal access to the forum provided. The Association shall not edit or redact any content from these communications; however, the Association may include a statement specifying that the Member, and not the Association, is responsible for the content of the communication, and that the Association was required by law to publish the communication verbatim, regardless of content.

b. Nothing in these Election Rules shall preclude the Association, during the balloting period, from communicating to the Members (via e-mail to all Members who have consented to receiving documents from the Association by e-mail, and in other ways): (i) reminders of the ongoing election, (ii) encouragement to return ballots prior to the close of the balloting period, (iii) instructions for obtaining a replacement ballot and/or (iv) information on how and where to return completed ballots.

2. Access to Common Area Meeting Space. Access to common area meeting space, if any exists, shall be provided during a campaign to all Members advocating a point of view for purposes reasonably related to the election, at no cost, subject to procedural rules as may be adopted by the Board to assure orderly use of such meeting space.

B. Election Notification. Not less than 30 days before the Association mails out the *Ballot Packets* (see Section 2, Paragraph D of these Election Rules), the Association shall provide all of the following ("Election Notification") (via "general delivery"¹³):

1. The physical address(es) where ballots are to be returned by mail or handed to the Inspector of Election;

2. The date and time by which ballots are to be returned by mail or handed to the Inspector of Election;¹³ and

3. The date, time, and location of the meeting at which the ballots are scheduled to be counted.

C. Content of Ballots. The official ballot form¹⁴ shall contain or state the following:

¹³ The balloting period may be extended - see Section 2, Paragraph C.4 and Section 2, Paragraph H of these Election Rules.

¹⁴ Or forms, if one or more Members has requested a *Multiple Lot Ballot*.

1. the identification of the matter that is the subject of a pending Member vote;
2. a statement that the initial balloting period will close at such time and on such date established by the Board, which shall be not less than 30 days from the date of the *Ballot Packets* are mailed to the Members;
3. a statement specifying that the Association was not permitted to edit or redact any content from the communications provided pursuant to Section 2, Paragraph A.1 of these Election Rules and thus the author of each such communication, and not the Association, is responsible for the content of such communication;
4. a statement that the balloting period may be extended; and
5. the internet website address where these Election Rules are posted, together with the following phrase (in at least 12-point font): "*The rules governing this election may be found here*".¹⁵

D. Distribution of Ballot Packets. Not less than 30 days prior to the date established by the Board for the close of the initial balloting period, the Association shall prepare (or cause to be prepared) the *Ballot Packet*, and the Inspector of Election shall mail (or cause to be mailed¹⁶), (via first-class U.S. mail, postage prepaid) one *Ballot Packet* to each Member. Each *Ballot Packet* shall contain all of the following:

1. one official ballot;
2. two sealable envelopes, a smaller envelope ("Inner Envelope") and a larger envelope ("Outer Envelope");
3. the *Secret Ballot Voting Instructions*;
4. if the election is regarding an amendment of a governing document, the text of the proposed amendment; and
5. if the internet website address referred to in Section 2, Paragraph C.5 of these Election Rules is not included on the ballot, a copy of these Election Rules.

¹⁵ In lieu of posting these Election Rules on an internet website and including this phrase on the ballot itself, the Association may instead include a copy of these Election Rules in the *Ballot Packets*.

¹⁶ By any person or entity designated by the Inspector of Election, including without limitation the Association's management company.

The Inner Envelope shall either (1) be totally blank or (2) contain such wording as may be determined or approved by the Inspector of Election. There shall be no Member-identifying markings on the Inner Envelope. The Outer Envelope shall be pre-addressed to the Inspector of Election at the address specified by the Inspector of Election. The Outer Envelope shall contain *either* (1) blank lines in the upper left hand corner for the voter to sign the voter's name, indicate the voter's name, and indicate the address(es) or Lot number(s) that entitles/entitle the voter to vote *or* (2) a pre-printed label that indicates the voter's name and the address(es) or Lot number(s) that entitles/entitle the voter to vote and contains at least one blank line for the voter to sign the voter's name.

E. Rules Regarding Voting Using the Two-Envelope System. See Section 1, Paragraph I of these Election Rules.

F. Balloting Period. See Section 1, Paragraph J of these Election Rules.

G. Inspector of Election. See Section 1, Paragraph K of these Election Rules.

H. Opening of Envelopes / Counting and Tabulation of Ballots. See Section 1, Paragraph L of these Election Rules. In the event that there are not enough Outer Envelopes to meet the quorum requirement, the Inspector of Election shall not proceed with opening the Outer Envelopes, and shall notify the Board that a quorum has not been established. The Board may extend the balloting period. If the Board extends the balloting period, the Board shall communicate such extension to the Members.

I. Election Results. See Section 1, Paragraph M of these Election Rules.

J. Inspector of Election Report. See Section 1, Paragraph N of these Election Rules.

K. Custody, Storage and Retention of Election Materials. See Section 1, Paragraph O of these Election Rules.

L. Multiple Lot Ballots. Notwithstanding anything contained in the Association's governing documents to the contrary, Members who own multiple Lots may, but are not required to, cast some or all of their votes on a *Multiple Lot Ballot* rather than on multiple ballots, pursuant to the rules and procedures regarding *Multiple Lot Ballots* set forth in Section 1 of these Election Rules and as may be established by the Inspector of Election.

Section 3 General Election / Voting Provisions

This Section 3 shall apply to all Member voting matters including, without limitation, elections regarding (i) Assessments, (ii) selection of Directors, (iii) removal of Directors, (iv) amendments to the governing documents and (v) grants of exclusive use common area property pursuant to California Civil Code Section 4600.

A. **Qualifications for Voting.** Only Members are entitled to voting rights.¹⁷

B. **Voting Power of Memberships.** The Association has two classes of voting membership, Class A and Class B, as more particularly described in Section 3.1 of the Association's Bylaws. The voting power of each class of voting membership is as set forth in Section 3.1 of the Association's Bylaws. The Class B Membership shall cease and be converted to Class A Membership, as set forth in Section 3.1 of the Association's Bylaws.

Following the cessation of the Class B Membership and the conversion of the Class B Membership to Class A Membership, the Association shall have only one class of Membership, Class A. Thereafter, the following shall apply:

1. ***Director Elections.*** At each election of Directors, each Member may cast, with respect to each seat on the Board to be filled in such election, one vote for each such seat. Cumulative voting is permitted.

2. ***All Other Matters.*** In all other matters, each Member may cast one vote for each Lot owned by such Member.

C. **Proxies.** The authenticity, validity and effect of proxies with respect to any Member voting matter shall be as set forth in the Association's Bylaws, as such Bylaws may be amended from time to time, and in California law (including without limitation California Corporations Code Section 7613 and California Civil Code Section 5130). The Association is not required to solicit proxies with respect to any Member voting matter.

D. **"Candidate Registration List" and "Voter List".** The Association shall maintain a "Candidate Registration List" and a "Voter List".

1. ***Candidate Registration List.*** The *Candidate Registration List* shall consist of the name of each Member whose *Notice of Desire to be a Candidate* was received by the Association prior to the Nomination Deadline.

2. ***Voter List.*** The *Voter List* shall include the name, voting power, and either the physical address of the voter's Lot, the parcel number, or both. The mailing address for the ballot shall be listed on the *Voter List* if it differs from the physical address of the voter's Lot or if only the parcel number is used.

The Association shall permit Members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The Association or the Member shall report any errors or omissions to either list to the Inspector of Election who shall make the corrections within two business days.

¹⁷ The Association shall not deny a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed. The Association shall not deny a ballot to a person with general power of attorney for a Member. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.

EXHIBIT "A"

REQUIRED INFORMATION FOR "CANDIDATE SOLICITATION ANNOUNCEMENT"

The *Candidate Solicitation Announcement* shall contain at least the following information:

1. Interested Members must notify the Association, in writing, that they would like to be a candidate.
2. The time and date by which the *Notice of Desire to be a Candidate* and the optional *Director Election Statement* must be received by the Association (the "Nomination Deadline"), and the location(s) at which the *Notice of Desire to be a Candidate* and the optional *Director Election Statement* must be received by the Association.
3. Except as provided in Section 1.D of the Election Rules, in order to be eligible to become a candidate, a person must, as of the Nomination Deadline, be (a) a Member and (b) current in the payment of regular and special Assessments.
4. Except as provided in Section 1.D of the Election Rules, in order to be eligible for election to the Board, a candidate must, as of the date scheduled for close of the balloting period, be (a) a Member and (b) current in the payment of regular and special Assessments.
5. At all times, at least one Director shall have been elected solely by the Class A Members, excluding Declarant.
6. Candidates and Members advocating a point of view may, but are not required to, submit a *Director Election Statement* which (1) when printed, shall not exceed one side of a single 8½" x 11" page and (2) shall be reasonably related to the election. By submitting a *Director Election Statement*, the author accepts full responsibility for the content thereof and agrees to indemnify the Association and its agents and representatives for any and all damage arising from or related to any such content.
7. The *Notice of Desire to be a Candidate* and the *Director Election Statement* must either be mailed, hand delivered or e-mailed to the Association at the address(es) designated by the Board of Directors for that purpose, and must be received by the Association at such address(es) prior to the Nomination Deadline. It is each Member's responsibility to confirm that such Member's *Notice of Desire to be a Candidate* and *Director Election Statement* were received by the Association at such address(es) prior to the Nomination Deadline.
8. Members who own multiple Lots may, but are not required to, cast some or all of their votes on a *Multiple Lot Ballot* rather than on multiple ballots.

9. Members who wish to use *Multiple Lot Ballots* must submit a *Multiple Lot Ballot Request*. The *Multiple Lot Ballot Request* must either be mailed, hand delivered or e-mailed to the Association at the address(es) designated by the Board of Directors for that purpose, and must be received by the Association prior to the Nomination Deadline. It is each Member's responsibility to obtain a *Multiple Lot Ballot Request* form from the Association and to confirm that his or her completed *Multiple Lot Ballot Request* was received by the Association prior to the Nomination Deadline.

10. Each Member who uses a *Multiple Lot Ballot* (1) understands that its use might compromise the "secrecy" aspect of the balloting process with respect to such Member, (2) knowingly and voluntarily waives any right or expectation to such "secrecy" and (3) agrees to release and indemnify the Inspector of Election, the Association, and their respective agents and representatives, for any and all damage arising from or related to his or her use of a *Multiple Lot Ballot*.

EXHIBIT "B"

GENERAL FORMAT FOR "CANDIDATE SOLICITATION ANNOUNCEMENT"

**Riverchase at Promenade Homeowners Association
Important Announcement #1 Regarding Upcoming Election of Directors**

You are invited and encouraged to become a candidate for election to the Riverchase at Promenade Homeowners Association's Board of Directors. There are ___ seats up for election this year, currently held by _____ and _____. The ___ candidates who receive the highest number of votes in the election will serve two-year terms.

To become a candidate, you must notify the Association in writing, by completing and submitting the enclosed *Notice of Desire to be a Candidate* form. Your *Notice of Desire to be a Candidate* must be submitted either by e-mail to _____ or by mail or hand delivery to the following address:

Riverchase at Promenade Homeowners Association

_____.

Your *Notice of Desire to be a Candidate* and your optional *Director Election Statement* (described below) must be received by the Association prior to 5:00 p.m. on _____, 20__ (the "Nomination Deadline"). Each Member who meets the qualifications set forth below and whose *Notice of Desire to be a Candidate* is received by the Association prior to the Nomination Deadline shall automatically be a candidate. There shall be no nominations from the floor at the Annual Meeting and votes for write-in candidates shall not be valid. It is each Member's responsibility to confirm that such Member's *Notice of Desire to be a Candidate* was received by the Association prior to the Nomination Deadline.

Candidate / Director Qualifications:

1. Except as provided in Section 1.D of the Election Rules, in order to be eligible to become a candidate, a person must, as of the Nomination Deadline, either be (a) a Member and (b) current in the payment of regular and special Assessments.

2. Except as provided in Section 1.D of the Election Rules, in order to be eligible for election to the Board, a candidate must, as of the date scheduled for close of the balloting period, be (a) a Member and (b) current in the payment of regular and special Assessments.

3. At all times, at least one Director shall have been elected solely by the Class A Members, excluding Declarant.

Director Election Statements:

Each candidate and each Member advocating a point of view may, but is not required to, submit (to the addresses listed above) a *Director Election Statement* that is reasonably related to the election. *Director Election Statements* shall not, when printed, exceed one side of a single 8½" x 11" page. Black and white copies of all *Director Election Statements* that are received by the Association prior to the Nomination Deadline will be included with the ballot packets that will be mailed to all Members and may be posted on the Association's official internet website, in accordance with the Association's Election Rules.

By submitting a *Director Election Statement*, you accept full responsibility for its content and agree to indemnify the Association and its agents and representatives for any and all damage arising from or related to any such content. It is each Member's responsibility to confirm that such Member's *Director Election Statement* was received by the Association.

Use of a "Multiple Lot Ballot":

Any Member who owns more than one Lot may, but is not required to, cast some or all of his or her votes on a *Multiple Lot Ballot* rather than on multiple ballots, for the Member's administrative convenience. A Member who wishes to use a *Multiple Lot Ballot* must submit a written request on the *Multiple Lot Ballot Request* form provided by the Association for that purpose. The *Multiple Lot Ballot Request* must either be mailed, hand delivered or e-mailed to the Association at the addresses identified above, and must be received by the Association prior to the Nomination Deadline. It is each Member's responsibility to obtain a *Multiple Lot Ballot Request* form from the Association and to confirm that his or her completed *Multiple Lot Ballot Request* was received by the Association prior to the Nomination Deadline. Each Member who uses a *Multiple Lot Ballot* (1) understands that its use might compromise the "secrecy" aspect of the balloting process with respect to such Member, (2) knowingly and voluntarily waives any right or expectation to such "secrecy" and (3) agrees to release and indemnify the Inspector of Election, the Association, and their respective agents and representatives, for any and all damage arising from or related to his or her use of a *Multiple Lot Ballot*.

EXHIBIT "C"

GENERAL FORMAT FOR "NOTICE OF DESIRE TO BE A CANDIDATE"

**Riverchase at Promenade Homeowners Association
Notice of Desire to be a Candidate**

I desire to be a candidate for election to the Riverchase at Promenade Homeowners Association's Board of Directors in the upcoming election. I am the owner of the Lot identified below within the Riverchase at Promenade development.

By submitting this *Notice of Desire to be a Candidate*, I understand and acknowledge the following:

1. I may, but am not required to, submit a *Director Election Statement* to the Association. The content of my *Director Election Statement* must be reasonably related to the election, and must not exceed one side of a single 8½" x 11" page. Black-and-white copies of all *Director Election Statements* that are received by the Association by [time] on [date] (the "Nomination Deadline") will be included with the ballot packets which will be mailed to all Members. Scanned copies of all *Director Election Statements* that are received prior to the Nomination Deadline may be posted on the Association's official internet website, in accordance with the Association's *Election Rules*. By submitting a *Director Election Statement*, I accept full responsibility for its content and agree to indemnify the Association and its agents and representatives for any and all damage arising from and related to any such content.
2. It is my responsibility to confirm that this *Notice of Desire to be a Candidate* and my *Director Election Statement* were received by the Association by the Nomination Deadline.

By submitting this *Notice of Desire to be a Candidate*, I attest that as of the date hereof, I meet all of the qualifications for candidacy and election to the Board.

[Print Name]

[Signature]

[Date]

[Riverchase at Promenade Lot# or Property Address]

EXHIBIT "D"

GENERAL FORMAT FOR "ELECTION NOTIFICATION"

**Riverchase at Promenade Homeowners Association
Important Announcement #2 Regarding Upcoming Election of Directors**

Within the next 30-40 days, you will be receiving your *Ballot Packet* for the election of Directors to the Riverchase at Promenade Homeowners Association's Board of Directors. Please note the following important information regarding that election:

- 1. The ballots are to be returned by mail or handed to the Inspector of Election at the following address:**

- 2. The initial balloting period is scheduled to end at [time] on [date]. That means that your ballot must be received by the Inspector of Election by that time/date.** (Note: The balloting period may be extended if sufficient ballots have not been received to establish a quorum.)

- 3. The meeting at which the ballots are scheduled to be counted will be held at [time] on [date], at [location].** (Note: If the balloting period is extended because sufficient ballots were not received to establish a quorum, the Board will provide notice of the date, time and location of the rescheduled meeting at which the ballots will be counted.)

- 4. The following candidates' names will appear on the ballot:**

EXHIBIT "E"

GENERAL FORMAT FOR "SECRET BALLOT VOTING INSTRUCTIONS"

**Riverchase at Promenade Homeowners Association
Secret Ballot Voting Instructions**

Dear Member:

Enclosed is your *Secret Ballot* to vote on the election of _____ Directors. Please review these instructions prior to completing your *Secret Ballot*. Following these instructions better ensures that your *Secret Ballot* will be counted to determine the outcome of the election.

- A. Once you have reviewed the enclosed *Secret Ballot* and any supplemental materials regarding the election, please indicate your vote(s) on the *Secret Ballot* by putting an "X" or other distinguishing mark in the appropriate square(s).
- B. _____ Directors are being elected. Please do not vote for more than _____ candidates. **Please note: If you vote for more than _____ candidates, none of your votes in the director election will be counted.** You are not required to vote for _____ candidates; you may vote for fewer than _____ candidates if you wish.
- C. **DO NOT** write your name, address or lot number on the *Secret Ballot*. **DO NOT** sign your *Secret Ballot*.
- D. Once you have indicated your votes on your *Secret Ballot*, place the *Secret Ballot* into the plain smaller envelope (marked "Secret Ballot Envelope" or "Ballot Envelope"). Seal the smaller envelope. **DO NOT** sign or write anything on that envelope.
- E. Place that smaller envelope containing the completed *Secret Ballot* into the larger, Return Envelope that is pre-addressed to the Inspector of Election. Seal the Return Envelope.
- F. **Sign your name** and indicate your name and the address or lot number within the Riverchase at Promenade development that entitles you to vote, where indicated **in the upper left hand corner on the front of the Return Envelope**. (Failure to sign the Return Envelope invalidates the enclosed *Secret Ballot*.)
- G. Add postage and deposit the Return Envelope in the mail, or hand-deliver it to the Inspector of Election. **If you return your Return Envelope by mail, the envelope must be received by the Inspector of Election no later than**

[time] on [date] . If you wish to submit your Return Envelope in person, you may do so at the [insert location as designated by the Inspector of Election and/or the place of the Annual Membership Meeting if applicable], until the time stated in the Agenda of the Annual Membership Meeting.

- H. Once your *Secret Ballot* is cast, it cannot be revoked. A *Secret Ballot* is "cast" when the Return Envelope is received at the location designated by the Inspector of Election.
- I. If you need a replacement *Secret Ballot*, please contact the Association's [contact person], [insert name], at [insert phone number].

EXHIBIT "F"

GENERAL FORMAT FOR "REPORT OF INSPECTOR OF ELECTION"

**Riverchase at Promenade Homeowners Association
Report of Inspector of Election
Election of Directors**

1. The duly-appointed Inspector of Election was _____.
2. The envelopes containing the ballots were mailed or delivered by hand to [address].
3. The balloting period for this vote closed at [time] on [date].
4. With assistance from _____, the Inspector of Election opened the envelopes, and counted and tabulated the votes, at the [date] Board of Directors Meeting.
5. The Inspector of Election confirmed the existence of a quorum and determined the number of memberships entitled to vote and the voting power of each.
6. Challenges or questions that arose at the meeting in connection with a member's right to vote were heard and decided upon by the Inspector of Election.
7. The Association's members were permitted to observe the opening of the envelopes and the counting and tabulation of the votes.
8. The Inspector of Election did not open [number] envelopes because the owner/voter did not sign its name in the upper left-hand corner of the "outer" envelope, as is required by California Civil Code Section 5115(c)(1). The Inspector of Election did not open [number] envelopes because there was no signature, name or address on the "outer" envelope. The Inspector of Election did not open [number] envelopes because they were submitted without an "outer" envelope. The Inspector of Election did not open [number] envelopes because the owner/voter had already submitted an envelope containing a ballot.¹⁸ The Inspector of Election did not open [number] envelopes because they were received after the balloting period had closed.
9. The results of the director election are as follows:

<u>Candidate's Name</u>	<u># of Votes</u>
[Candidate A]	_____
[Candidate B]	_____ (elected to the Board)
[Candidate C]	_____ (elected to the Board)
[Candidate D]	_____

¹⁸ The "first-received" envelope was opened, and the "second-received" envelope was not opened.

10. The Inspector of Election performed all duties impartially, in good faith, to the best of the Inspector of Election's ability, and as expeditiously as was practical.
11. The ballots will be stored at [address], which is the location designated by the Inspector of Election in accordance with California Civil Code Section 5125.

By my signature below, I verify that I served as the Inspector of Election in this election and that this report constitutes the Report of Inspector of Election.

Dated: _____, _____
